



APR / 1755
132.

PATENT
Customer No. 34,986
Attorney Docket No. 01222.0034-00-000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
David A. RUSSO et al.) Group Art Unit: 1755
Application No.: 08/544,212) Examiner: D. Brunsman
Filed: October 17, 1995)
For: COATING COMPOSITION FOR)
GLASS)

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22315-1450

Sir:

**WRITTEN STATEMENT PURSUANT TO 37 C.F.R. § 1.133 (b) OF REASONS PRESENTED
AT ORAL INTERVIEW AS WARRANTING FAVORABLE CONSIDERATION**

Applicants' attorney presents the following written statement pursuant to 37 C.F.R. § 1.133 (b) of reasons presented during several telephone calls to the United States Patent and Trademark Office as warranting favorable consideration of this reissue application.

On February 9, 2005 applicants' attorney contacted Mr. Craig Feinberg at the Board of Patent Appeals and Interferences ("the Board") to inquire why he had not received a Docketing Notice in this application, since the October 14, 2003 communication from examiner Brunsman stated that his Group Art Unit 1714 had forwarded the above identified application to the Board for decision on the appeal. Mr. Feinberg could only indicate that within the previous week that the Board had in turn forwarded the application to the Petitions Office and gave the name of petitions attorney Elizabeth Dougherty as the contact person to find out what had happened to the application. Applicants' attorney called Ms. Dougherty's office on February 9, 2005 and was

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advised by a voice mail message that she was out of the office, returning on February 14, 2005, and accordingly left a message requesting a return telephone call.

Not having received a return call, applicants' attorney telephoned Ms. Dougherty at the petitions Office on February 14, 2005, February 17, 2005 and two times on February 22, 2005, leaving messages each time requesting a return phone call to determine the status of the application, since she was not available to take the calls. He did not receive any call-backs, but on the third attempt to reach her on February 22 did in fact talk to her and she advised that the Patent Office had pulled the application from the Board and assigned it to the Petitions Office for a determination of whether or not the application should be considered under the criteria of Ex Parte Eggert, 67 USPQ 2d 1716 (Bd. of Pat. App. & Intf., 2003) regarding the doctrine of recapture in reissue applications. Ms. Dougherty said she would assign the application to a petitions examiner in her office to make that determination.

Applicants' attorney then called Ms. Dougherty on February 23, 2005, February 24, 2005, and two times on February 25, 2005, again leaving voice messages requesting a call back since she was not available to take the calls. Ms. Dougherty returned these calls on February 28, 2005 saying she had assigned the application to examiner James Engle in the Petitions Office and that she was trying to assign another of applicants' cases, application Serial No. 09/287,664 relating to the present case, to a different examiner in her office. Applicants' attorney requested that she assign both case to the same examiner because of the related subject matter, which she said she would do. She advised that the examiner in her office receiving the cases would make a determination of whether or not the Ex Parte Eggert issues applied or would need briefing by the Technical Center ("TC") that examined the application.

After ending that telephone conversation, applicants' attorney reviewed the file and determined that both the Examiner's Answer and the Reply Brief filed almost two years before addressed the Ex Parte Eggert issues. Applicant's attorney therefore telephoned Ms. Dougherty the first week of March 2005 to let her know of this and requested that she return the

call. Within the next day or two she did return the call but at 7:30 in the morning, leaving a voice mail to advise that the Petitions Office had sent both applications to the "T.C." Applicants' attorney then telephoned Ms. Dougherty again, but she was not able to take the call, and accordingly left a message for her to call back. Ms. Dougherty did not call back.

Applicants' attorney has therefore checked the United States Patent and Trademark Office "PAIR" system regularly since that time, and as of March 23, 2005, it does not indicate that the Board received the application, docketed the application or forwarded it to the Petitions Office, nor does it indicate that the Petitions Office forwarded it to the "T.C."

Respectfully submitted,

The Law Offices of Robert J. Eichelburg

Dated: March 24, 2005

By: 
Robert J. Eichelburg Reg. No 23,057

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Services under 37 C.F.R. § 1.8 on the date indicated below and is addressed to the Commissioner for Patents, P.O. BOX 1450, Alexandria, Virginia 22313 -1450

Dated: March 24, 2005

By: 
Robert J. Eichelburg Reg. No 23,057